UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES NEW YORK BRANCH OFFICE

UNITED STATES POSTAL SERVICE	Case Nos. 25-CA-31726
	25-CA-31728
and	25-CA-31729
	25-CA-31733
AMERICAN POSTAL WORKERS UNION,	25-CA-31766
LOCAL UNION NO. 210, a/w AMERICAN	25-CA-31767
POSTAL WORKERS UNION	25-CA-31769
	25-CA-31770
	25-CA-31799

Fredric Roberson, Esq., Counsel for the General Counsel.

David Wightman, Esq. and Matthew Gowan, Esq., Counsel for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on September 13, 2011 in South Bend, Indiana. The Consolidated Complaint herein, which issued on June 23, 2011 and was based upon unfair labor practice charges and amended charges that were filed by American Postal Workers Union, Local Union No. 210, a/w American Postal Workers Union, herein called the Union, from January 10, 2011 through April 19, 2011, alleges that the United States Postal Service, herein called the Respondent, violated Section 8(a)(1)(5) of the Act by delaying providing certain requested relevant information to the Union.

Findings of Fact

I. Jurisdiction

Respondent admits, and I find, that the Board has jurisdiction over it by virtue of Section 1209 of the PRA.

II. Labor Organization Status

Pursuant to a stipulation at the commencement of the hearing, Respondent admits that the Union is a labor organization within the meaning of Section 2(5) of the Act, and is an agent of the national union, which is the named labor organization in the contract.

III. The Facts

The Complaint alleges that from July 22, 2010¹ to January 21, 2011 the Union requested that the Respondent furnish it with certain information that was necessary for, and relevant to, the Union in the performance of its duties as the collective bargaining representative for certain employees of the Respondent, but that the Respondent unreasonably delayed in providing the

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2010.

JD(NY)-41-11

Union with this requested information. Specifically, the Complaint sets forth the information requests that were made by the Union during this period which were not responded to in a timely manner. Respondent, in its Answer, while admitting that most of the information requests were made, denies that the information requested was relevant to the Union as the employees' bargaining representative.

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Debbie Spillman, who is employed by the Respondent and is a steward and the maintenance craft director for the Union responsible for grievance investigations and filing grievances for the maintenance employees at the South Bend facility, testified for the General Counsel in support of these allegations. David Blackburn, the plant manager of the facility, and Valerie Mallard, Blackburn's acting secretary, testified for the Respondent. Spillman testified that she requests information from the Respondent for every grievance that she files to help in proving her case. For each request she fills out a Union form entitled: "Request For Information & Documents Relative To Processing A grievance" and gives it to Blackburn's secretary, who date stamps it, keeps one copy and gives the other copy to Spillman. The first information request that was filed relevant to this matter was initially filed on July 22; Spillman testified that this request for a list of the considerations for replacing doors at the Edison Park facility, together with the contract and invoices for the work, was relevant to the Union because the Union believed that under the contract unit employees should have performed that work rather than an outside contractor. When she did not receive this requested information, she made a second request on October 21, a third request on November 26, and a fourth request on January 4, 2011. She received this information in the Spring of 2011.

On November 30, Spillman requested certain subcontracts for the South Bend facility from January 1 to the date of the request, together with the considerations for each, and made a second request for the same information on December 28. In this situation, as well, the Union needed this information because they believed that the work involved should have been performed by the unit mechanics. She believes that they received this information in about the Spring of 2011. On December 1, she made a similar request for work orders and assignment sheets for work that was performed at the Respondent's facility in Logansport, Indiana, and made a second request for the same information on January 4, 2011. She testified that the Union needed this information for the same reason as the prior request; the Union believed that the work involved should have been performed by the Respondent's field maintenance mechanics rather than an outside contractor. She received this information in about the Spring of 2011. On December 8 she requested certain information regarding subcontracting at the Kokomo, Indiana postal facility that the Union felt should have been performed by the Respondent's unit mechanics. She made a second request for this information on December 28, and received it in the Spring of 2011. On January 3, 2011, Spillman made a fifth request (the first was in August) for certain subcontracts for the period March 1, 2009 through August 14. Like the other requests, this information was needed because the Union believed that the work involved should have been performed by its unit mechanics. This information was not given to the Union until months later.

From August 11 through December 29, Spillman made six requests regarding custodian staffing and scheduling and related documents for certain postal facilities in order for the Union to determine whether there was a contract violation. She testified that she did not receive this information until after March 31, 2011, although the Respondent alleges that it was provided in the Summer of 2010. From September 25 to December 10 she made four requests for "slightly different" information related to custodian staffing in South Bend and other area facilities in order to determine whether the new staffing package violated the contract. She did not testify when she received this information. Related to this issue were first, second and third requests that she made on November 20. December 20 and December 28 for the check list /route review of the

custodial routes for these postal facilities; this information would assist her with the grievance on this issue. She received this information in about March or April 2011.

Spillman filed separate first and second requests on December 11 and December 28 for the last official date of employment of seven named employees. She testified that each of these employees had retired and their jobs remained vacant, which would be a violation of the contract. She filed a grievance that the jobs should have been reposted and filled by a present employee and she needed this information in order to detetermine the date that the job became vacant. She received this information in about the end of March 2011.

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On January 10, 2011, she filed a request for all "clock rings" for five named employees for the period January 1, 2011 to January 14, 2011. She testified that she needed this information to determine the number of hours worked by each of these individuals to determine if there was an overtime violation of the contract. She did not receive this information until about June 2011. On January 11, 2011, Spillman filed requests for three employees, including herself, where the Union had won grievances for each, and the requests asked for proof that the employees had been paid the amount due to them. She received this information in about March 2011. On January 14, 2011, she requested clock rings for herself for the year 2010, which she received in about May or June 2011. On January 22, 2011, she requested information regarding snow plowing at the South Bend facility on January 7 and 8, 2011. She testified that unit employees are supposed to perform that work and she needed that information to determine whether there was a contract violation. She did not testify when she received this information.

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On January 21 and February 10, 2011, Spillman filed eleven information requests asking for information about eleven alleged subcontracts that the Respondent allegedly entered into at a number of its facilities in the area. This work allegedly involved parking lot lights, overhead garage doors, handrails, toilets and similar work. Spillman testified that in order to subcontract such work, the Respondent must provide the Union with certain documents, including the ones that she requested. She was not certain whether she received these documents before or after April 20, 2011.

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As Blackburn's secretary, Mallard generally is the recipient of the information requests from the Union, as well as the Mail Handlers Union, at the facility. Spillman or another steward brings the information request to her or sends it to her through the inter-office mail, she date stamps the request, and gives it to Blackburn, who signs it and notes which manager or supervisor it should be routed to, or whether Mallard is to retrieve the information herself. Once the information is retrieved, she sends it to the Union by certified mail. She testified that she never refused to provide the Union with information in response to its request and that for one of the Union's requests litigated herein, the January 10, 2011 request for clock rings for five named employees for the period January 1 to January 14, 2011, she was late in responding to this request because she had misplaced this request. Blackburn testified that some information requests are more difficult to respond to than others. Upon receiving the request, he has to determine which supervisor or manager can provide the information or, in other situations, which postal facility to forward the request to. In about June 2011, he and Mallard improved the system of responding to the Union's information requests, so that if he does not respond to a request within a day or so, she will remind him of the request and the need to respond.

IV. Analysis

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The law is clear that when the collective bargaining representative of unit employees makes a request for relevant information it must be replied to within a reasonable time. In

Detroit Newspaper Agency, 317 NLRB 1071, 1072 (1995), the Board stated: "Once a union has made a good-faith request for information, an employer must provide relevant information reasonably promptly in useful form." Similarly, in *Amersig Graphics, Inc.*, 334 NLRB 880, 885 (2001), the Board stated: "An employer must respond to the information request in a timely manner. An unreasonable delay in furnishing such information is as much a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all." As the information that Spillman requested was clearly relevant to the Union as the collective bargaining representative of the Respondent's clerks and maintenance employees at the South Bend and other facilities of the Respondent, the ultimate issue herein is what constitutes an *unreasonable* delay. In *West Penn Power Co.*, 339 NLRB 585, 587 (2003), the Board stated:

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In determining whether an employer has unlawfully delayed responding to an information request, the Board considers the totality of the circumstances surrounding the incident. Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow. In evaluation the promptness of the response, the Board will consider the complexity and extent of information sought, its availability, and the difficulty in retrieving the information.

Although Spillman's testimony on when she received the requested information was less than precise, that is certainly understandable considering the large number of information requests that she made.² Without discussing each of her many information requests, they ranged from easy to compile (the request made first on December 11 for the final date of employment of seven named employees, and the request made on January 10, 2011 for clock rings for five named employees for a two week period) to more difficult requests for subcontracts for other of Respondent's facilities, such as her requests on November 30, December 1 and December 8. However, Respondent, in its replies, did not differentiate between the easier and the more difficult requests; rather, the evidence establishes that Respondent's replies took from two to eight months, with most replies falling within the four to six month range, and Respondent failed to present any evidence explaining or defending these delays. I therefore find that by responding to the Union's information requests in an untimely manner, Respondent violated Section 8(a)(1)(5) of the Act.

Conclusions of Law

1. The Board has jurisdiction over the Respondent pursuant to Section 1209 of the PRA.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1)(5) of the Act by responding to the Union's information requests from about July 22 to January 21, 2011 in an untimely manner.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find

² Counsel for the Respondent, in his opening statement, and Blackburn and Mallard in their testimony, made reference to the unusually large number of information requests that were made by Spillman. Although this may have been annoying and time consuming for the Respondent and Blackburn, in particular, the place to remedy that situation is at negotiations, not an unfair labor practice hearing.

that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In that regard, I recommend that Respondent be ordered to respond to the Union's relevant information requests in a timely manner, and that it post a notice at its South Bend, Indiana facility stating that it will do so.

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Upon these findings of fact and conclusions of law and on the entire record, I issue the following recommended $^{\!3}$

ORDER

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The Respondent, United States Postal Service, its officers, agents, successors and assigns, shall

1.Cease and desist from

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- (a) Refusing to provide timely responses to Union requests for information that are necessary for, and relevant to, the Union's performance of its duties as the exclusive collective bargaining representative of certain of the Respondent's employees.
- 20 (b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
 - 2. Take the following affirmative action necessary to effectuate the policies of the Act.

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(a) Upon receipt of information requests from the Union that are necessary for, and relevant to the Union as the collective bargaining representative of certain of its employees, provide the Union with the information in a reasonable and timely manner.

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(b) Within 14 days after service by the Region, post at its facility in South Bend, Indiana, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 22, 2010.

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³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

	(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.		
5	Dated, Washington, D.C., October 25, 2011.		
10	Joel P. Biblowitz Administrative Law Judge		
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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union Choose representatives to bargain with us on your behalf Act together with other employees for your benefit and protection Choose not to engage in any of these protected activities

WE WILL NOT refuse to provide timely responses to requests from American Postal Workers Union, Local No. 210, a/w American Postal Workers Union ("the Union") for information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of certain of our employees.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL promptly provide the Union with the relevant information that it requests and, if we are unable to locate any of the requested information, **WE WILL** explain the reasons for the unavailability to the Union.

UNITED STATES POSTAL SERVICE (Employer)

Dated	By	
	(Representative)	(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

575 North Pennsylvania Street, Federal Building, Room 238 Indianapolis, Indiana 46204-1577

Hours: 8:30 a.m. to 5 p.m. 317-226-7382.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER. 317-226-7413.